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No. 97-7597

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

PATRICK KNOWLES, Petitioner,

vs.

STATE OF IOWA, Respondent.

BRIEF IN OPPOSITION TO

PETITION FOR A WRIT OF CERTIORARI

TO THE IOWA SUPREME COURT

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COUNTERSTATEMENT OF QUESTION PRESENTED

WHERE A PEACE OFFICER OBSERVES A TRAFFIC VIOLATION AND IS STATUTORILY AUTHORIZED EITHER TO MAKE A CUSTODIAL ARREST OR TO ISSUE A "CITATION IN LIEU OF ARREST," MAY THE OFFICER, CONSISTENT WITH THE FOURTH AMENDMENT, ISSUE A CITATION AND SEARCH THE PASSENGER COMPARTMENT OF THE VEHICLE UNDER THE "SEARCH INCIDENT TO ARREST" DOCTRINE?

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OPINION BELOW and STATEMENT OF THE CASE

The facts are not disputed. Officer Cook of the Newton Police Department stopped petitioner for driving at an excessive speed. The officer issued petitioner a speeding citation and then searched the passenger compartment of his car.[1] Under the driver's seat he found two gloves, one containing marijuana and the other a "pot pipe." He then arrested petitioner for possession of marijuana.

The State charged petitioner with possession of marijuana and keeping a controlled substance in a motor vehicle. Petitioner sought to suppress the marijuana evidence, asserting that the search of his car violated his rights under the Fourth Amendment. At the suppression hearing the officer testified that he searched petitioner's car pursuant to his statutory authority to make a "search incident to citation." The district court denied the motion to suppress. Ruling; App. A6. Trial to the court followed and petitioner was found guilty as charged. Judgment; App. A8.

On appeal the Iowa Supreme Court, following its recent decision in State v. Doran, 563 N.W.2d 62 (Iowa 1997),

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[1]Petitioner's assertion that the officer "proceeded to thoroughly search both [petitioner's] person and the passenger compartment of his vehicle" (Petition at 2) is misleading. See Supp. Tr. 7-8; App. A18-A19. The officer apparently did not search petitioner's person until after the contraband was found in his car. See Supp. Tr. 7-8, 10-11; App. A18-A19, A21-A22.

affirmed the district court. State v. Knowles, ___ N.W.2d ___ (Iowa 1997); App. A1. The Court upheld the constitutionality of the Iowa statutory scheme which (1) authorizes peace officers to make custodial arrests for observed traffic violations, (2) authorizes issuance of a "citation in lieu of arrest", and (3) provides that issuance of a citation "does not affect the officer's authority to conduct an otherwise lawful search."[2]

In Doran, involving similar circumstances, the Iowa Supreme Court held that "[i]f the officer is legally permitted and objectively authorized to make the arrest, he is, for that reason alone, also authorized to make the search." 563 N.W.2d at 623. Furthermore, section 805.1(4), recognizing that an officer's authority to conduct a lawful search is not affected by issuance of a citation in lieu of arrest, does not extend the authority to search beyond that permitted by the Fourth Amendment. Id.

In Knowles, the court reaffirmed its holding in Doran. Slip op. at 3; App. A3. It explained:

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[2]See Iowa Code §§ 804.7(2), 805.1(1) and 805.1(4). Petitioner is challenging only the Iowa Supreme Court's interpretation of section 805.1(4), which provides:

> 4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for purposes of the speedy indictment requirements of R. Cr. P. Section 27, subsection 2, paragraph "A", Ia. Ct. Rules, 3rd ed.

> We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of the authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

Knowles, slip op. at 3-4; App. A3-A4.

ARGUMENT

REASONS FOR DENYING

THE WRIT

I. PETITIONER'S CLAIM PRESENTS NO IMPORTANT ISSUE OF FEDERAL LAW.

The case at bar involves the interpretation of a state statute under the Federal and Iowa Constitutions. The holding conforms to the point made in Sibron v. New York that if "probable cause to arrest" precedes a search, the search is valid:

> Of course, the fruits of a search may not be used to justify an arrest to which it is incident, but this means only that probable cause to arrest must precede the search. If the prosecution shows probable cause to arrest prior to a search of a man's person, it has met its total burden. There is no case in which a defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards."

Sibron v. New York, 392 U.S. 40, 77, 88 S. Ct. 1889, 1909, 20 L. Ed. 2d 917, 943 (1968) (Harlan, J., concurring), quoted in Doran, 563 N.W.2d at 622. Furthermore, the decision is consistent with this Court's holdings in Gustafson and Robinson, which emphasize the custodial nature of the arrest. See Gustafson v. Florida, 414 U.S. 260, 94 S. Ct. 488, 38 L. Ed. 2d 456 (1973); United States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973). That is, the act of stopping a driver on probable

cause to arrest and detaining that driver long enough to issue a citation has sufficient characteristics in common with a custodial arrest to justify a search for purposes of officer safety. Moreover, this concern for officer safety is a matter over which states have broad legislative discretion. See Doran at 623, citing Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685, 694 (1969), and State v. Becker, 458 N.W.2d 604, 607 (Iowa 1990).

Under these circumstances, although a question is presented under the Fourth Amendment of the Federal Constitution, it does not involve any novel or important concepts which have not been previously addressed and decided by this Court.

II. THERE IS NO CONFLICT AMONG JURISDICTIONS.

Petitioner's claim that the ruling by the Iowa Supreme Court conflicts with other jurisdictions is unfounded. He cites only one case from a state, Arizona, which has a statutory scheme he claims is similar to Iowa's. Petition at 7-8. See State v. Taylor, 808 P.2d 324 (Ariz. Ct. App. 1990), review denied, 821 P.2d 166 (Ariz. 1991), cert. denied, 503 U.S. 998, 112 S. Ct. 1705, 118 L. Ed. 2d 413 (1992). However, Taylor is readily distinguishable.

First, the Arizona statutory scheme differs from Iowa's in that it allows police to "release from custody" a person who has been "arrested" for a minor offense. See A.R.S. § 13-3903(A).[3] It further provides:

> F. Nothing in this section shall be construed to affect a peace officer's authority to conduct an otherwise lawful search incident to his arrest even though such arrested person is released before being taken to the police station . . . .

A.R.S. § 13-3903(F) (emphasis added). This statutory scheme, unlike Iowa's, clearly requires a custodial arrest before a search may be made.

Second, the majority in Taylor does not interpret these statutes or apply them to the facts. In fact, it does not even mention any of them in its one-page opinion. See 808 P.2d at 324-25.

Third, the facts upon which the ruling is based are not clear. The majority recites that two police officers approached Taylor, intending to write him a citation for drinking beer in a city park. But rather than doing so, one of the officers searched him and found hashish in his

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[3]The subsection provides:

> A. In any case in which a person is arrested for an offense that is a misdemeanor or petty offense, the arresting officer may release the arrested person from custody in lieu of taking such person to the police station by use of the procedure prescribed in this section.

See also A.R.S. § 13-3881(A), which defines an "arrest" as involving "actual restraint of the person to be arrested" or "submission to the custody" of the officer.

billfold. Id. at 324. The court held that this search was unreasonable. Id. at 325. In contrast, the dissent asserted, "It is clear that under the facts of this case appellant was arrested and in custody when he was searched." Id. at 325 (Hathaway, J., dissenting). Given these considerations, Knowles does not conflict with Taylor.

The numerous other cases cited by petitioner, from both state and federal courts, are distinguishable in that none of them involves interpretation of a statutory scheme which authorizes, for the safety of the officer, a "search incident to citation." See Petition at 8-11.

III. THE DECISION IN QUESTION WILL NOT LEAD TO ARBITRARY OR DISCRIMINATORY ENFORCEMENT.

Several recent rulings of this Court have discussed the perceived danger of arbitrary and discriminatory automobile stops and searches. Those rulings have consistently upheld searches by officers having probable cause to arrest. See Whren v. United States, 517 U.S. ___, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (Court rejects argument that "the 'multitude of applicable traffic and equipment regulations' is so large and so difficult to obey perfectly that virtually everyone is guilty of violation, permitting police to single out almost whomever they wish for a stop"; "probable cause" or "reasonable suspicion" sufficiently constrains police from acting arbitrarily); Maryland v. Wilson, 519 U.S. ___, 117 S. Ct. 882, 137 L. Ed. 2d 41

(1997) (after lawful traffic stop, officer may order passenger to exit vehicle based on "weighty interest in officer safety"); Ohio v. Robinette, 519 U.S. ___, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996) (officer need not tell a lawfully stopped driver that he is free to leave before officer asks driver's consent to search vehicle). Based on these principles, petitioner's fear of arbitrary or discriminatory enforcement under Iowa law is unfounded.

CONCLUSION

Based on the above, the holding in Knowles presents no important federal question, does not conflict with the holdings of other courts, and will not lead to arbitrary or discriminatory enforcement. Accordingly, certiorari should be denied.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

ON PETITION FOR WRIT OF CERTIORARI TO THE IOWA SUPREME COURT

PATRICK KNOWLES,	)	**No. 97-7597**
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF IOWA,	)	**APPEARANCE OF COUNSEL**
	)	
Respondent.	)	

Paul Rosenberg, attorney at law, admitted to practice before this court, hereby enters his appearance as counsel of record for Petitioner Patrick Knowles.

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PROOF OF SERVICE

On the 5 day of February, 1998, I, the undersigned did serve an Appearance of Counsel on all other parties to this appeal by mailing one (1) copy thereof to the following counsel:

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Paul Rosenberg

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

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TO THE IOWA SUPREME COURT

PATRICK KNOWLES,	)	**No. 97-7597**
Petitioner,	)	
vs.	)	
STATE OF IOWA,	)	**NOTICE OF SUBSTITUTION OF COUNSEL FOR PETITIONER PATRICK KNOWLES**
Respondent.	)	

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PROOF OF SERVICE

On the 5 day of February, 1998, I, the undersigned did serve a Notice of Substitution of Counsel for Petitioner Patrick Knowles on all other parties to this appeal by mailing one (1) copy thereof to the following counsel:

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